

## REMARKS

Claims 17, 38-41, 56-65 are pending in the application. Claims 17, 38-41, 56-65 are rejected in this Office Action.

### Rejection Under 35 USC § 112

The Examiner rejected claims 17, 38-41, 56-65 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter with applicant regards as the invention.

The Examiner indicated, "claim 17 recites nonreactive with but interactive to the pigmented composition". The Examiner found the phrase renders the claim vague and indefinite because the meaning of the phrase is unclear. The Examiner indicates that it is not clear how a same wetting agent can be nonreactive with but at the same time interactive to the pigmented composition.

The Examiner rejected the remaining claims as they depend on the base claim.

Applicants have amended claim 17 to a lip cosmetic comprising an anhydrous pigmented transfer resistant, film forming, cross-linked resinous silicone, composition in combination with a non reactive wetting agent having affinity to, the composition, said wetting agent being an alpha olefin copolymer, which copolymer is a liquid polymeric hydrocarbon having a number average molecular weight greater than 650 devoid of non-volatile silicone oils, and wherein the wetting agent is nonreactive with transfer resistant, film forming, cross-linked resinous silicone while at the same time capable of interacting with the internal and external surfaces and matrices of the film by seeping into spaces and surfaces sufficient to wet the transfer resistant film.

Support for the amendment is found on page 20, lines 12 – 19. The amendment indicates that there is no chemical reaction with the film former and that the interaction

of the wetting agent and film former is a mechanical interaction which results in the wet appearance of the film former.

Applicants believe the amendment of claim 17 as indicated makes the claim definite. Applicant requests the Examiner withdraw the rejection under 35 U.S.C. 112, second paragraph.

Rejection Under 35 U.S.C. §102(b)

The Examiner rejects claims 17, 38-41, 56-65 under 35 U.S.C. §102(b) as being anticipated by Dreschsler et al. (US 6074654) as evidenced by STN Registry.

Applicant respectfully traverses the Examiner's rejection.

The allegedly invalidating reference must meet all the limitations of the claims. "[T]he court should determine "whether the subject of the barring activity met each of the limitations of the claim, and thus was an embodiment of the claimed invention." *Dana Corp. v. Am. Axle & Mfg., Inc.*, 279 F.3d 1372, 1375-76, 61 U.S.P.Q.2d 1609, 1611 (Fed. Cir. 2002), quoting *Scaltech Inc. v. Retec/Tetra, L.L.C.*, 178 F.3d 1378, 1383, 51 U.S.P.Q.2d 1055, 1058 (Fed. Cir. 1999). See also, *Toro Co. v. Deere & Co.*, 355 F.3d 1313, 1319 (Fed. Cir.), *reh'g denied*, 2004 U.S. App. LEXIS 4125 (2004) ("First, the district court never expressly construed limitation (c) of the '168 patent. The analysis of anticipation should have begun by construing limitation (c), to guide the analysis of the allegedly anticipating prior-art reference.").

To anticipate a claim, a single source must contain all of the elements of the claim. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984); *In re Marshall*, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

Applicants claim, a lip cosmetic comprising an anhydrous pigmented transfer resistant, film forming, cross-linked resinous silicone, composition in combination with a non reactive wetting agent having affinity to, the composition, said wetting agent being

an alpha olefin copolymer, which copolymer is a liquid polymeric hydrocarbon having a number average molecular weight greater than 650 devoid of non-volatile silicone oils, and wherein the wetting agent is nonreactive with transfer resistant, film forming, cross-linked resinous silicone while at the same time capable of interacting with the internal and external surfaces and matrices of the film by seeping into spaces and surfaces sufficient to wet the transfer resistant film.

The Examiner indicates, "Dreschler discloses a lip color film-forming composition comprising crosslinked organosiloxane resin such as Wacker 803 from Wacker Silicones corp. (trimethylsiloxysilicate) and pigments in a volatile carrier. See col. 7, line 46 – col. 9, line 2." The Examiner indicates, "the reference also discloses a method of enhancing the gloss, shine, and feel of lip composition by apply a complimentary product, known as "overcoat" or "topcoat", over the film formed after application of a transfer-resistant lip composition. See col. 10, line 63 – col. 16, line 7." The Examiner indicates, "the reference also teaches in col. 2, lines 7-13 that it is well known in the art to formulate a transfer-resistant cosmetic composition with trimethylated silica and volatile solvent and using the film forming silicone resin in the amount ranging from .10 to 95%. See instant claims 63 and 64. Example 7 also contains 10% of Bentone Gel VS-5PC, which contains quaternium-19 hectorite. See STN-Registry."

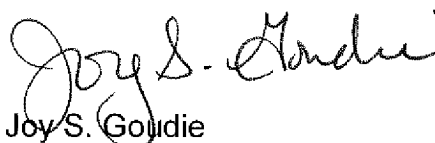
In the Final office action issued July 2, 2007, the Examiner points out that "Dreschler fails to specifically teach using a liquid polymeric hydrocarbon with number average greater than about 650 to make the overcoating composition." (page 3, paper No/mail Date 20070623)

The different types of ingredients that may be found in the overcoat composition of Dreschler are listed at column 11, lines 15-24, and Examples 1-10 spanning columns 11-15. The major ingredients are two different sucrose esters of fatty acids (SEFA) (Examples 5-10). Dreschler does not teach the liquid polymeric hydrocarbons of applicant's claims, nor that such hydrocarbons have any usefulness as an overcoat ingredient.

The failure of Dreschler to disclose the polymeric hydrocarbon means that Dreschler does not meet all the limitations of the claims; however, this is what must be done for a reference to anticipate.

It is applicant's position that the pending amended claims all contain limitations not found in Dreschler, and that the Examiner consider that this application is ready for allowance.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joy S. Gouldie". The signature is fluid and cursive, with the first name "Joy" being the most prominent.

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